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MISCELLANEOUS:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 341

FLOYD A. WALLIS, *Petitioner,*

v.

PAN AMERICAN PETROLEUM CORPORATION, *Respondent.*

FLOYD A. WALLIS, *Petitioner,*

v.

PATRICK A. McKENNA, *Respondent.*
(Pan American Petroleum Corporation, Initially a Co-Defendant with Wallis)

On Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit

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BRIEF FOR PATRICK A. McKENNA

STATEMENT OF THE CASE

In January 1954, McKenna, a resident of Washington, D. C., and Wallis, a resident of New Orleans, Louisiana, began their joint venture to obtain a federal oil and gas lease on certain lands situate in one of the passes of the

mouth of the Mississippi River. (R. 2) The lands at the time, and are today, owned by the federal government. (R.78)

As agreed between the parties, applications to lease were filed on June 2, 1954, by McKenna in the name of Wallis with the Department of the Interior in Washington, D. C., pursuant to the Mineral Leasing Act for Acquired Lands.[1] In his letter of December 27, 1954, Wallis confirmed in writing McKenna's one-third undivided interest in these applications and in any lease or leases which may have been issued thereunder. (R.2 & 8) The terms of the letter were approved by McKenna in the District of Columbia on January 3, 1955, and copies of the letter were filed of record in the same city with the Department's Bureau of Land Management on February 3, 1955. The Bureau was also advised by Wallis in writing of the written agreement with McKenna by which he was to receive the indicated interest in the leases on their issuance. (R. 2).

Counsel was retained in early 1955 to help prosecute the applications before the Department with each party agreeing to pay one-half of the legal fees. (R. 3). When counsel was no longer able to represent the parties, he was succeeded in late 1955 by another attorney to carry on the processing of the applications with each party again agreeing to pay one-half of the legal fees. Soon thereafter, the decision was made, with McKenna participating, to file another application, covering the same lands, for a federal oil and gas lease but this time pursuant to the Mineral Leasing Act of 1920.[2] (R. 3). A copy of the public domain

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[1] Act of Aug. 7, 1947, c. 513, 61 Stat. 913, U.S.C.A. Title 30, Sections 351 *et seq.*

[2] Act of Feb. 25, 1920, c. 85, 41 Stat. 437, as amended, U.S.C.A., Title 30, Sections 181 *et seq.*

application [3] was forwarded to McKenna on the day of its filing, March 8, 1956, who continued to pay his one-half share of the attorney's fees until he was advised by Wallis in late April 1956 that the latter no longer recognized the agreement between them. (R. 4).

Meanwhile, Wallis had negotiated an option agreement with Pan American on March 3, 1955, respecting the acquired lands applications and received as part of the consideration therefor a cash payment of $8,300. McKenna was not advised of this agreement until following the issuance of the public domain lease in early 1959, Wallis having long before on March 29, 1955, denied that any such agreement had been reached with Pan American. (R. 5).

The public domain lease was issued to Wallis in December 1958, after an exhaustive opinion by the Department of Interior determining that the lands were not then and had never been within the State of Louisiana nor subject to its jurisprudence. When Wallis refused to honor his solemn agreements, suit was instituted in March 1959 before the United States District Court for the Eastern District of Louisiana. The trial court applied its view of the law of Louisiana and confined McKenna's interest to the acquired lands applications, [4] although all applications related to

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[3] Public domain land is that in which title vested in the United States because of its sovereignty. Acquired land is that which was once privately owned and then acquired by the United States. An application for an oil and gas lease on public domain land is filed under the 1920 Act while such an application, if acquired land is involved, is filed under the 1947 Act. McKenna v. Seaton et al., 104 U.S. App. D. C. 50, 259 F. 2d 780 (1958), *cert. denied* 358 U.S. 835.

[4] As to these applications, the trial court said, ". . . In any case, as Wallis admits, the agreement was effective to transfer to McKenna an interest in the then pending applications and any lease issued thereunder." (R. 67).

the same lands and to a federal oil and gas lease on such lands.[5] With one judge dissenting, the Court of Appeals reversed and remanded, holding that federal law should govern the case. (R. 78, 80).

SUMMARY OF ARGUMENT

Where equitable rights of private parties in lands owned by the United States originate prior to the issuance of the evidence of title, such equitable rights are enforceable in the courts and cannot be defeated by the interposition of local state law because:

A. Prior clear decisions of the United States Supreme Court have so held for over a hundred years, constitute a rule of property, and ought not be turned aside except for the most compelling of reasons, which reasons do not exist here;

B. The United States has a decided interest in the fullest utilization and exploitation of its mineral and oil and gas resources, has enacted sweeping statutes of regulation for oil and gas leases, and experience teaches that uniformity and stability in trade and commerce constitute not only a desirable but a most effective tool to consummate such utilization;

C. In this case, the court of final resort in the state involved has held that such equitable rights in such circumstances are to be enforced and not defeated;

D. Justice demands that our system of jurisprudence exert every effort to enforce the rights of all of its citizens, as opposed to aiding in the defeat of such rights predicated on commonly rejected and unusually restrictive local laws;

E. Assuming arguendo that a state can interpose its law, the thrust of Erie does not compel the application of such

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[5] In this connection, the trial court observed. "It may be true, as plaintiffs suggest, that the lease ultimately granted, pursuant to the public domain application, is, from the lessee's point of view, no different than one issued under an acquired lands offer. But that decides nothing . . ." (R. 73).

unusual and commonly rejected restrictive local laws to defeat the ends of justice where there exist no local interest to be protected, no state's rights to be enforced, the restrictive law is procedural only, and such would be at the expense of the destruction of a long-standing rule of property, would destroy the true purpose of uniformity, and would inevitably constitute a hazard to the unwary.

ARGUMENT

A. FEDERAL LAW SHOULD APPLY BECAUSE:

1. Stare Decisis and the "Rule of Property" demand it.
2. Uniformity demands it.
3. The "Choice of Law" demands it.
4. Justice demands it.
5. Naught to the contra exists in Erie.

1. Stare Decisis and the "Rule of Property" Demand it

In its opinion of June 7, 1956, (R. 83),[6] the Department of the Interior examined the Louisiana Purchase from France with meticulous care, concluding therefrom that title became vested in the United States to all of the lands embraced in the Louisiana Purchase including the marginal sea. Subsequently, the State of Louisiana by specific descriptions was carved out of the Louisiana Purchase. In so carving out the State of Louisiana, the marginal sea was not conveyed to the Commonwealth of Louisiana, but title to such was retained by and in the United States. Thereafter, the lands involved in this suit arose out of the marginal sea in the form of mud lumps. Such newly formed lands, according to the Department of the Interior, were never within the physical confines of the State of Louisiana, and

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[6] The Fifth Circuit Court of Appeals quoted the opinion of the Bureau of Land Management at R. 83-86.

the jurisprudence of that state never attached. Based on these holdings, the Department of the Interior concluded the lands were part of the public domain as contrasted with after acquired lands.

Long ago the Court in *Wilcox* v. *Jackson,* 38 U.S. (13 Peters) 498, 516 (1839) stated the following as a fundamental proposition of law:

> "We hold the true principle to be this, that whenever the question in any court, state or federal, is, whether a title to land which had once been the property of the United States has passed, that question must be resolved by the laws of the United States; but that whenever, according to those laws, the title shall have passed, then that property, like all other property in the state, is subject to the state legislation; so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States."

In *Gibson* v. *Chouteau,* 80, U.S. (13 Wall.) 92, 99-100 (1871), the Court observed as follows:

> "With respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made. No State legislation can interfere with this right or embarrass its exercise . . ."

In the case of *Massie* v. *Watts,* 10 U.S. (6 Cranch) 148 (1810), one Massie, the agent of O'Neal, entered government lands for himself and obtained a patent in his own name. The agency had its inception in events prior to the issuance of the patent. Having thus obtained the legal title, Massie refused to convey to O'Neal. In decreeing the release sought by O'Neal in the United States District Court, the United States Supreme Court affirmed. In *Irvine* v. *Marshall and Barton,* 61 U.S. (20 How.) 558 (1856), the

Supreme Court analyzed its holding in *Massie* by quoting from that case and saying at pages 565 and 566:

> " 'If Massie (i.e., the agent) really believed that the entry of O'Neal (his principal), as made, could not be surveyed, it was his duty to amend it, or to place it elsewhere. But if in this he was mistaken, it would be dangerous in the extreme—it would be a cover for fraud which could seldom be removed, if a locator alleging difficulties respecting a location might withdraw it, and take the land for himself. But Massie, the agent of O'Neal, has entered the land for himself, and obtained a patent in his own name. According to the *clearest and best-established principles of equity,* the agent who so acts becomes a *trustee* for his principal. He cannot hold the land under an entry for himself, otherwise *than as a trustee for his principal.'* This exposition of the equity powers of the courts of the United States as applicable to resulting trusts—a power inseparable from the cognizance over frauds, one great province of equity jurisprudence—is conclusive."

In *Bagnell et al.* v. *Broderick,* 38 U.S. (13 Peters) 436 (1839), the Supreme Court again made it clear that federal law was to apply to equitable rights created prior to the issuance of a patent.

Thereafter, the case of *Irvine* v. *Marshall and Barton, supra,* which closely parallels the case at bar, was considered by this Court. In that case, Irvine filed suit alleging that at a sale of public lands in the Minnesota territory, Marshall, as the agent and with the funds and under the authority of Irvine and Barton, purchased for them 160 acres of land and was issued a certificate of purchase. When suit was filed, Marshall was about to convey the entire acreage to Barton, having refused to convey to Irvine his undivided share. The effect of a territorial statute in force at the time was, as stated by the Court, "that in every instance of a grant or purchase, or of an agreement for the purchase of lands for a valuable consideration, in which the price or consideration shall be paid by one person, and the convey-

ance or the contract for title shall be to another, no use or trust shall result in favor of the person by whom such payment shall be made, but the title and possession shall vest exclusively in the person named as the alienee in such conveyance or agreement." (61 U.S. at 561). The judgment entered for Marshall and Barton was sustained on appeal but was reversed by this Court whose underlying premise was stated as follows at pages 561 and 562:

> ". . . It cannot be denied that all the lands in the Territories, not appropriated by competent authority before they were acquired, are in the first instance the exclusive property of the United States, to be disposed of to such persons, at such times, and in such modes, and by such titles, as the Government may deem most advantageous to the public fisc, or in other respects most politic. This right has been uniformly reserved by solemn compacts upon the admission of new States, and has heretofore been recognized, and scrupulously respected by sovereign States within which large portions of the public lands have been comprised, and within which much of those lands is still remaining . . ."

The Court then asked at page 562:

> ". . . Can this right co-exist with a power in a Territory (itself the property of the United States) to interpose and to dictate to the United States to whom, and in what mode, and by what title, the public lands shall be conveyed? If a person desirous of purchasing shall depute an agent to attend a sale of public lands, and if at such sale payment be made by the agent with the funds of his principal, and both agent and principal shall present themselves at the General Land Office, and mutually request a patent to be issued to the true owner, can it possibly be thought within the competency of a Territorial Legislature, either upon the suggestion, or upon proof of the fact, that a certificate of purchase was given to the agent in his own name, to interpose, and say to the Federal Government, *you shall not make a title to this person whom you know, upon the acknowledgment of all concerned, is the true and bona fide purchaser of the land, and, if you do we will vacate that title?* . . ."

In refusing to apply the territorial statute to the case before it, the Court concluded at page 564 that:

> "When the engagements or undertaking of the United States, with respect to property exclusively and confessedly their own, from a period anterior to the existence of the Territorial Government, shall have been consummated; when the subject and all control over it, shall have passed from the United States, and have become vested in a citizen or resident of the Territory, then indeed the Territorial regulations may operate upon it; but whilst these remain in the United States, or are affected by their rights, or powers, or duties, those rights, duties, or powers, can in no wise be influenced by an inferior and subordinate authority."

It was, moreover, the view of the Court of Appeals below as expressed at page 435 of 334 F. 2d that:

> "The principles of law announced in repeated opinions of the Supreme Court seem to us clearly to lead to the conclusion that as to the original patent, lease or other grant from the United States, federal law controls in determining title in its broadest sense, including strictly legal title, trust rights and any and all equitable or beneficial interests. Gibson v. Chouteau, 1871, 80 U.S. (13 Wall.) 92, 101, 102; Sparks v. Pierce, 1885, 115 U.S. 408, 413; Van Bracklin v. State of Tennessee, 1886, 117 U.S. 151, 168; Widdicombe v. Childers, 1888, 124 U.S. 400, 405; Felix v. Patrick, 1892, 145 U.S. 317, 328; United States v. Colorado Anthracite Co., 1912, 225 U.S. 219, 223; Buchser v. Buchser, 1913, 231 U.S. 157, 161; Ruddy v. Rossi, 1918, 248 U.S. 104, 106, 107; see also other cases cited in 73 C.J.S. Public Lands, Section 209, and 42 Am. Jur., Public Lands, Section 37."

As the Fifth Circuit also pointed out on page 435, the same principle was recognized by the Supreme Court of Louisiana in *Kittridge* v. *Breaud*, 39 Am. Dec. 512 (La. 1843) where the court had before it a controversy between citizens of Louisiana involving the title to lands patented by the United States. The defendant stood on the legal title in him as evidenced by the patent from the United States which

he held. However, the plaintiff was clearly the equitable holder and the Louisiana Supreme Court had no hesitancy in holding his equitable title superior to the defendant's legal title, saying: (R. 83)

> ". . . And the principle is well recognized in our jurisprudence, as well as in that of the courts of the United States, that where an equitable right, which originated before the date of the patent, whether by first entry or otherwise, is asserted, it may be examined into: Bush v. Ware, 15 Pet. 93; Bouldin v. Massie, 7 Wheat. 149."

The foregoing cases are clearly and decisively on point in the issue presented in the case at bar and allow no other conclusion but that federal law must be applied to govern the question of McKenna's interest in the federal oil and gas lease which is the subject of his controversy with Wallis.

We take cognizance of the opposition's attempt to distinguish *Massie* v. *Watts* and *Irvine* v. *Marshall* on two bases: First, that title had not passed from the United States; and second, that the cause of action did not accrue until Wallis' refusal to convey. Such efforts to distinguish are not valid because the Court made it crystal clear that it was referring to equitable rights originating prior to the issuance of the patent. In *Massie* v. *Watts,* the patent had issued. In *Irvine,* the certificate of purchase had issued. In *Kittridge* v. *Breaud,* the patent was held by the defaulting party. It is immaterial when the unsuspecting first discovers he has been defrauded. Discovery does not create the right.

This Court, moreover, has recently expressed the view that, "Unlike a land patent, which divests the Government of title, Congress under the Mineral Leasing Act has not only reserved to the United States the fee interest in the leased land, but has also subjected the lease to exacting restrictions and continuing supervision by the Secretary [of the Interior]." *Boesche* v. *Udall,* 373 U.S. 472, 478 (1962).

The scheme of oil and gas leasing under the Mineral Leasing Act [7] is entirely federal in scope and can in no way tolerate the interdiction by state law as to who can or cannot, or who may or may not, qualify to participate in an interest in the lease hold. The Congress in the Act has in precise, and exhaustive, detail established the aggregate acreage covering which persons may hold, own or control at one time oil and gas leases "acquired directly from the Secretary under this Act or otherwise" [8] or may hold, own or control options to acquire interests in such leases, [9] taking into account also in the same Section of the Act the combined interests of members of associations and stockholders of corporations, [10] forbidden interests acquired by descent, will, judgment or decree; [11] the cancellation, forfeiture and disposal of interests in excess of acreage limitations, [12] as well as the effect thereof on the title or interest of a bona fide purchaser of a lease, an interest in a lease or an option in connection therewith; [13] and unlawful trusts, including conspiracies in restraint of trade. [14]

The Congress has provided that federal oil and gas leases "may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest

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[7] 30 U.S.C.A. §§ 181 *et seq.* All lands subject to disposition under the Act, or so-called public domain lands, "which are known or believed to contain oil or gas deposits may be leased by the Secretary of the Interior." Id. at § 226(a).

[8] § 184(d)(1).

[9] § 184(d)(2).

[10] §184(e) and (f).

[11] § 184(g).

[12] § 184(h)(1) and (j). See also § 188.

[13] § 184(h)(2) and (i).

[14] §184(k).

therein, to any person or persons qualified to own a lease"[15] under the Act, stating that the Secretary "shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond."[16] It has also legislated the conditions by which a lessee may file a written relinquishment of all rights under a federal oil and gas lease[17] and as to the forfeiture and cancellation of leases which have been isued "whenever the lessee fails to comply with any provisions [of the Act], of the lease, or of the general regulations promulgated under [the Act]," as well the possible reinstatement thereof.[18]

Under the Mineral Leasing Act, as amended, if the lands are within any known geological structure of a producing oil and gas field, they are to be leased to the highest responsible bidder on the basis of competitive bids[19] or if the lands are not within such a structure, they are to be leased to the person first making an application for lease who is qualified to hold a lease under the Act without competitive bidding.[20] Other provisions are also included in the Act which set forth detailed guidelines in the working and other aspects of the federal leasing program thereunder.[21] The Secretary, moreover, is authorized "to prescribe the necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of [the Act].[22]

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[15] § 187a.

[16] *Ibid.*

[17] § 187b. As to the authority of the Secretary to accept the surrender of a lease, see § 188a.

[18] § 188.

[19] § 226(b).

[20] § 226(c) which is the basis upon the subject lease was issued.

[21] E.g., §§ 209, 225, 226, 226-1. See also §§ 191 and 192.

[22] § 189.

It is manifestly clear from the provisions of the Mineral Leasing Act that even following the issuance of a lease has been no surrender by the federal government of its jurisdiction over, and concern with the detailed workings of, the lease. The lessee is not free to work the lease according only to his own will and terms and his lease will revert in a number of instances to the federal government. The fee interest in the lands covered by the lease remains in the federal government whose involvemnt in the lease is continuing from its issuance until its termination or abandonment.[23] Accordingly, the federal oil and gas lease bears no resemblance to, and falls far short of, the divestiture of the federal government's ownership and control as in the land patents with which the *Irvine* and other cases cited above were concerned. It is thus a *fortiori* that McKenna's interest in the lease at issue must be determined by federal law.

In the disposition of its lands, the rule of property promulgated by the United States Supreme Court in the decisions hereinbefore cited has become fixed, and has been the law well over a hundred years. As late as 1957, as the culmination of intensive study, "Report Of The Interdepartmental Committee For The Study Of Jurisdiction Over Federal Areas Within The States," in two volumes, was printed by the United States Printing Office. In Volume 2 at page 273, this distinguished group placed its stamp of unqualified approval on *Gibson* v. *Chouteau, supra, Bagnell* v. *Broderick, supra, Wilcox* v. *Jackson, supra,* and *Irvine* v. *Marshall, supra.*

The wisdom of the law has decreed that rules of property should remain stable, should be overturned only with great

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[23] As this Court expressed it in Boesche," . . . [The Secretary of the Interior] may direct complete suspension of operations on the land . . . or require the lessee to operate under a cooperative or unit plan . . . and he may prescribe, as he has, rules and regulations governing in minute detail all facets of the working of the land . . ." (373 U.S. at 478).

reluctance and for the most pressing of need. The Supreme Court in *U.S.* v. *Title Ins. & Trust Co. et al.*, 265 U.S. 472, 486-487 (1923) quoted with approval its language set forth in *Minnesota Company* v. *National Company*, 70 U.S. (3 Wall.) 332 (1865), as follows:

> "Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. Legislatures may alter or change their laws, without injury, as they affect the future only; but where courts vacillate and overrule their own decisions on the construction of statutes affecting the title to real property, their decisions are retrospective, and may affect titles purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change."

Borrowing from the language of this Court in *U.S.* v. *Title Ins. & Trust Co. et al., supra*, "That rule often has been applied in this and other courts, and we think effect should be given to it in the present case."

2. Uniformity Demands It

As is clearly evidenced from the sweeping provisions of the Mineral Leasing Act, the Congress has demonstrably undertaken to delineate in thorough detail the policies and procedures to be followed in administering the federal oil and gas leasing program. In 1955, the then Solicitor of the Department of Interior pointed out (Vol. 1, p. 45, Rocky Mountain Mineral Law Institute) that the U.S. was then producing oil at the rate of 130,000,000 barrels per year from U.S. lands under the jurisdiction of the Department of the Interior. On March 31, 1955, there were 95,575 leases embracing 71,600,000 acres of public land in 24 states and Alaska, or an area larger than the State of Colorado. The staggering importance today of this vital resource to the

United States is quickly seen in the tremendous increase in the foregoing figures. During the year 1961 (Release Interior 3289 of 3/27/62), there were 152,220 leases embracing 112,172,040 acres and producing 291,900,000 barrels of oil through 30,000 producible wells. The value of this oil was in excess of one billion dollars.

Late last year, the U.S. Geological Survey released more recent figures. Such reveal that in 1964 the value of oil and gas produced on the lands of the United States accounted for more than 12% of the total value of all oil and gas produced in the United States compared with less than 6% in the year 1955. Or to express it differently, the value of oil and gas produced increased from $453,000,000 in 1955 to $1,274,000,000 in 1964.

Allowing the interstices of such a program to be filled by the variables and contradictions which may, and oftentimes do, characterize the policies and procedures when moving from one state to the next [24] may threaten the free flow of implementation which thus far has proved a marked success. Uniformity must therefore govern the filling of these interstices, particularly where Congress, as in federal oil and gas leasing, has so extensively dealt with the details

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[24] An example of this which is pertinent to the subject case is the contradiction of the Louisiana law relating to constructive and resulting trusts when viewed in the light of the law followed by the preponderance of jurisdictions. See *e.g.*, the dissent below (344 F. 2d at 437). In this connection, the Court in the Irvine case observed, ". . . And *cuio bono*, should this mischief be permitted? Simply to favor a visionary innovation for the destruction of resulting trusts and equitable titles, a class of titles resting upon the essential elements of all honest titles, *truth* and *justice*, and coeval with the very rudiments of equity law. And this innovation, too, to be extended not merely to cases which from contestation or from defective proof might be uncertain or hazardous, but to instances which shall forbid to persons willing and proffering the fufillment of their duty, the power to do so. The power of being honest, a power surely not so often exerted as to merit being repulsed as obtrusive and ungracious." (61 U.S. at 562).

of the program. This is the transcending principle which is essential and must necessarily be applied to the case at bar.

And it matters not that the subject case involves a controversy between private parties. The Congress in its wisdom has specifically determined upon a policy that leases "may be assigned or subleased, as to all or part of the acreage included therein, subject to the final approval by the Secretary and as to either a divided or undivided interest therein" and that the Secretary "shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond." (30 U.S.C.A. § 187a.). The direction by the Congress to allow assignments and subleases is clear and unequivocal and it was assuredly not contemplated that one or two states could step in and say, in contradistinction to the overwhelming number of jurisdictions, that the form of one's agreement did not qualify that person to receive an interest in a federal lease, thereby substituting, in a sense, the minority state's judgment for the Congress. [25]

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[25] Even within a state, the vagaries of circumstances and of the application of its laws may subject a question to unpredictable turns. In Louisiana, for example, the law on oil and gas had been in considerable confusion before 1938. See *e.g.*, Gulf Refining Co. of Louisiana v. Glassell, 186 La. 190, 170 So. 846 (1936). It was held in that case that a contract of lease created in the lessee a personal right which, had it continued to represent the law, would have essentially placed Louisiana in line with the other jurisdictions from the general standpoint of allowing parole evidence alone to establish McKenna' interest in the subject lease. The court in Reagan v. Murphy et al., 235 La. 529, 536, 105 So.2d 210, 212 (1958) described what happened after the Glassell case in these words, ". . . This pronouncement was not well received by the oil industry and, through its efforts, the Legislature, at its regular session of 1938, enacted Act 205 [now LSA-R.S. 9:1105] which classified oil and gas leases as real rights . . ." Following the enactment of the aforesaid law, the confusion continued as evidenced by, among other cases, Lawrence v. Sun Oil Co. et al., 166 F.2d 466 (5th Cir. 1948); Perkins v. Long-Bell Petroleum Company, Inc., 227 La. 1044, 81

The Court in *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U.S. 173, 176 (1942) commented as follows:

> "It is familiar doctrine that the prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common law rules. In such a case our decision is not controlled by Erie. . . . There we followed state law because it was the law to be applied in the federal courts. But the doctrine of that case is inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law. . . . When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted. To the federal statute and policy, conflicting state law and policy must yield. . . ."

Other cases, though unrelated in their general facts to the case at bar, might be noted in connection with the broader area involving the application of federal law as opposed to local law. *Holmberg* v. *Armbrecht*, 327 U.S. 392 (1946) involved the application of the federal equitable rule that a statute of limitations does not begin to run until the fraud has been discovered, instead of the New York statute which would have barred the suit between private parties to enforce the liability imposed upon bank stockholders by the Federal Farm Loan Act. It was held in

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So.2d 389 (1955); Arnold et al. v. Sun Oil Co., 218 La. 50, 48 So.2d 369 (1949); Coyle et al. v. North American Oil Consolidated et al., 201 La. 99, 9 So.2d 473 (1942); Amerada Petroleum Corporation v. Reese et al., 195 La. 359, 196 So. 558 (1940); Reagan v. Murphy et al., *supra*. In Hayes et al. v. Muller, 245 La. 356, 158 So.2d 191 (1963), involving a parole contract respecting an oil and gas lease, the court initially held on April 29, 1963 that a cause of action was nonetheless stated, only to reverse itself on rehearing on November 12, 1963.

Bomar v. *Keyes et al.*, 162 F. 2d 136 (2d Cir. 1947) that regardless of state law, the filing of the complaint tolls the state statute of limitations where suit has been filed on a federal claim. Whether, under the federal copyright law, an author's illegitmate child came within the term "children" was viewed primarily a matter of state concern in *DeSylva* v. *Ballentine*, 351 U.S. 570, 580 (1956). there being "no federal law of domestic relations." Accordingly, the law of California, the only state involved, was applied with the Court nonetheless saying at page 580:

> ". . . This does not mean that a State would be entitled to use the word 'children' in a way entirely strange to those familiar with its ordinary usage, but at least to the extent that there are permissible variations in the ordinary concept of 'children' we deem state law controlling. . . ."

It was held in *Francis et al.* v. *Southern Pacific Co.*, 333 U.S. 437 (1948) that the rights of an employee of a railroad killed in Utah (where suit was filed in federal court) while riding on a pass, not in connection with his duties as a railroad employee, were to be governed by federal, not Utah, law. The action in *Levinson et al.* v. *Deupree*, 345 U.S. 648 (1953), involving a collision on the Ohio River in Kentucky, was based upon a state-created right but would have been barred by the Kentucky statute of limitations had not federal law been applied, the suit being in admiralty. Federal law was also applied in *Dyke* v. *Dyke*, 277 F. 2d. 461 (6th Cir. 1955) which was an action to determine the rights to the proceeds of a National Service Life Insurance on the life of an ex-serviceman. Where the telegraph company in *O'Brien* v. *Western Union Telegraph Co.*, 113 F. 2d. 539 (1st Cir. 1940) was sued in tort for having transmitted a libellous message, federal law was applied with the court observing at page 541:

> ". . . Congress having occupied the field by enacting a fairly comprehensive scheme of regulation, it seems clear that questions relating to the duties, privileges

and liabilities of telegraph companies in the transmission of interstate messages must be governed by uniform federal rules. . . ."

In *Kossick* v. *United Fruit Co.*, 365 U.S. 731 (1961), the question was whether the application of the New York statute of frauds should be applied to an alleged contract between a steward employed on defendant's vessels. The District Court dismissed on the ground that the New York statute applied. The Second Circuit affirmed. On certiorari, this Court held to the contrary because, (1) the contract was a maritime contract, and (2) the application of state law would disturb the uniformity of maritime law. To quote:

> "In this posture of things two questions must be decided: *First*, was this alleged contract a maritime one? *Second*, if so, was it nevertheless of such a 'local' nature that its validity should be judged by a state law?"

The Court further said at page 741:

> "Turning to the present case we think that several considerations point to an accommodation favoring the application of maritime law. It must be remembered that we are dealing here with a contract and, therefore, with obligations, by hypothesis, voluntarily undertaken, and not as in the case of tort liability or public regulations, obligations imposed simply by virtue of the authority of the State or Federal Government. *This fact in itself creates some presumption in favor of applying that law tending toward the validation of alleged contract.* . . . As we have already said, it is difficult to deny the essentially maritime character of this contract without either indulging in fine-spun distinctions in terms of what the transaction was really *about*, or simply denying the alleged agreement that characterization by reason of its novelty. . . On the other hand, we are hard put to perceive how this contract was 'peculiarly a matter of state and local concern,' . . . unless it be New York's interest in not lending her courts to the accomplishment of fraud, something which appears to us insufficient to overcome the counter-

> vailing considerations. Finally, since the effect of the application of New York law here will be to invalidate the contract this case can hardly be analogized to cases such as Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 68 L. Ed. 582, 44 S. Ct. 274, or Just v. Chambers, 312 U.S. 383, 85 L. Ed. 903, 61 S.Ct. 587, both supra, where state law had the effect of supplementing the remedies available in admiralty for the vindication of maritime rights." (Emphasis Added)

Insofar as commerce in property in general has been concerned, uniformity in the legal aspects has been and is always, not only desirable but eagerly sought. Such enhances the free and untrammeled course of transactions in the development of resources and trade. That uniformity is desirable for private parties, and has long been sought by Bench and Bar for the benefit of society, can be seen in the energies and time devoted to the compliation and adoption of many uniform acts, including, inter alia, the Uniform Negotiable Instruments Law, the Uniform Sales Act, the Uniform Warehouse Receipts Act, the Uniform Stock Transfer Act, the Uniform Corporation Act, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Commercial Code, not to mention the entire Restatement Series. It is pure sophistry to advance the position that the United States Supreme Court is to be concerned only with the uniform enforcement of the rights of the federal government.

So it is that the Congress has also written into the Mineral Leasing Act of 1920 and in the Mineral Leasing Act for Acquired Lands of 1947 a comprehensive policy to govern the federal oil and gas leasing program which has been implemented by the Secretary of the Interior in meticulous and detailed regulations. The interest of the federal government in the lease does not end at the point of its issuance but continues through the term of the leasehold to dominate "in minute detail all facets of the working of the land." (373 U.S. at 478). Assignments are specifically included

within the ambit of the congressional policy governing the leasing program and it must not be state, but federal, law which should be applied with respect thereto.

3. The Choice of Law Demands It

Assuming for the purpose of this argument that Louisiana law is to be applied here, because such is the law of the forum and is so required by Erie, nonetheless, the Louisiana Supreme Court has exercised its power under the doctrine of Choice of Law. It could have drawn no distinction between lands of its own state or lands of the United States, but the Louisiana Court of Last Resort preferred to draw such distinction and to ignore its own Napoleonic code when it dealth with lands of the United States. Accordingly, in *Kittridge* v. *Breaud, supra,* it chose to apply the general law to equitable titles in lands of the United States. *Kittridge* v. *Breaud* was decided in the year 1843. At that time there was in existence and had been since the years 1804, 1808 and 1825 the same statutes as to immovables sought to be applied by the District Court below.

Consequently, if the federal court feels constrained to follow the rule laid down by the Supreme Court of Louisiana, it must hold in favor of McKenna, as *Kittridge* v. *Breaud* remains the law of the State of Louisiana.

4. Justice Demands It

Stripped of all artificial rules, there can be no doubt that simple stark justice requires that a joint venturer be not divested of his rights willy-nilly. The joint venture relationship has been accepted and enforced almost unanimously. See 18 A.L.R. 484 (1922), 95 A.L.R. 1242 (1935), *Libbey* v. *L. J. Corporation et al,* 101 U.S. App. D. C. 81, 247 F. 2d 78 (1957) and *Johnston et al.* v. *Goggin et al,* 323 F. 2d 36 (5th Cir. 1963). In the dissenting opinion below was the acknowledgment that "These great tools of justice are effectively used in other states to rectify the effects of bad faith."

Irvine v. *Marshall,* supra, may have been rendered over a hundred years ago but the language therein contained has continued to flourish and in no manner has been diminished with the passage of time. Equitable title still remains "A class of title resting upon the essential elements of all honest titles, truth and justice, and co-eval with the very rudiments of equity law."

Nor is the age-old aspiration of man for justice to be squelched by damming their quest for such justice to the status of a "private dog fight."

5. Naught to the Contrary Exists in Erie

Volumes have been written about Erie and unquestionably volumes more will be written. Whatever decision here the Court makes, it should do so on a rational and realistic view of what is involved.

The lands owned by the United States in this suit are part of the marginal sea and not in the confines of any state. Accordingly, we are not here concerned with a state statute regulating transactions affecting its real property, nor are we here concerned with a transaction in a state between its citizens. On the contrary, McKenna in Washington and Wallis in New Orleans entered into a joint venture to obtain a lease on property of the United States in the marginal sea. All of the events to take place and which did take place were in the District of Columbia with the Department of the Interior. If "substantive" law is to be considered, such would be that of the District of Columbia which recognizes joint ventures.

Under the "Choice of Law" doctrine, the Louisiana State Court could readily recognize this to be true and, even if it did not hold that federal law was to be applied, it could hold sensibly and logically that the substantive law of the District of Columbia controls. It is equally true that under the Choice of Law the Courts of the State of Louisiana could recognize what has just been stated, but at the same

time hold as a matter of "procedure" that it would not entertain oral testimony to substantiate a joint venture.

Consequently, in the context of Erie the clash at its widest is the narrow issue of whether or not the interest of uniformity in the rules of property to be attached to transactions involving oil and gas leases on property of the United States should yield to a matter of procedure and that in the very vague, unsatisfactory, chaotic area of Choice of Law. This brief would be unduly lengthy if we were to undertake to develop to the fullest extent the vagaries of the doctrine of the Choice of Law. This Honorable Court as recently as 1964, in the case of *Van Dusen* v. *Barrack*, 376 U.S. 612, had occasion to consider the shifting sands to be encountered in this field of jurisprudence. Erie was made to yield to the realities of the situation and to the interest of justice. A calm, dispassionate view of the particular situation before this Court presented by this case should bring the conclusion that the accident of the forum does not have the dignity to override the true objective of uniformity which is to enable the citizen to traffic in realty on the basis of stable, consistent rules of property.

B. IF THIS COURT HOLDS THAT THE LAW OF LOUISIANA DOES CONTROL, THE CASE SHOULD BE REMANDED FOR A DETERMINATION THAT THE WRITINGS IN THE RECORD MEET THE REQUIREMENTS OF SUCH STATE LAW.

In addition to arguing the application of federal law, McKenna, in the court below, also contended that even if the laws of Louisiana were applicable there was compliance therewith in the exchange of correspondence between the parties during 1954-1956 and until Wallis unilaterally attempted to terminate the agreement. McKenna argued that these writings manifestly demonstrated the existence of a joint venture, beginning in 1954, to obtain a federal oil and gas lease on the lands in question, as well as his interest therein.

McKenna further contended that his interest in the realty was specifically and formally confirmed in writing by Wallis in the letter of December 27, 1954, and that the trial court erred when it held that this confirmation by Wallis did not comply with the statute of frauds because it referred only to the serialized numbers of the acquired lands applications, as well as the lease itself, and not to the public domain application and lease. As McKenna argued, it is the realty or a lease thereon, not the classification of the realty as being acquired lands or public domain or the serialized numbers of the applications for lease, that constitute the immovable for the interest in which the evidence must be in writing.

He pointed out, among other things, that the sole purpose of filing either an acquired lands application or a public domain application can only be to obtain a federal oil and gas lease in and to particular realty owned by the United States. Without such as its aim, a filing would be vacuous. So, when the acquired lands applications were filed in June of 1954, pursuant to the McKenna-Wallis agreement of the preceding March, it was to obtain a federal oil and gas lease on the realty described in the applications. Its purpose had nothing to do with the numbers on the applications which were merely administrative nor whether the land was acquired or public domain. These applications were filed simply because both parties wanted an oil and gas lease on a particular tract of land. This then was the purpose for which the joint venture was necessarily formed and it was not to file only acquired lands applications with certain designated numbers.

The majority below, however, did not reach the issue of compliance with the Louisiana law, holding, instead, that federal law should govern the case. If this Honorable Court concludes that the Circuit was in error, this case should be remanded to it for a determination that, as we insist, the writings in evidence fully meet the requirements of the Louisiana statute.

CONCLUSION

Appellee McKenna respectfully urges this Honorable Court to affirm the opinion and order of the Circuit below, but if such is not the ruling of this Court, then this appellee urges that the case be remanded for a full review of the record in the light of the Louisiana statutes.

Respectfully submitted,

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Certificate of Service

I, E. L. Brunini, hereby certify that a copy of the foregoing Brief For Patrick A. McKenna, was served upon Counsel of Record, representing Petitioner Floyd A. Wallis, and, representing Respondent, Pan American Petroleum Corporation, and the Solicitor General, Department of Justice, Washington 25, D. C., by enclosing each such copy in an envelope, duly addressed to each such Counsel of Record and the Solicitor General, at his post office address, with the required air mail first class postage prepaid and affixed thereto, and depositing same in the United States Post Office at the District of Columbia, on this the day of January, 1966.

Counsel of Record for
Patrick A. McKenna